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11 Attorneys for Plaintiff

12 AVAGO TECHNOLOGIES GENERAL IP (SINGAPORE) PTE. LTD.

13 **UNITED STATES DISTRICT COURT**  
14  
**NORTHERN DISTRICT OF CALIFORNIA**  
15  
**SAN FRANCISCO DIVISION**

16  
17 AVAGO TECHNOLOGIES GENERAL IP  
18 (SINGAPORE) PTE. LTD.,

19 Plaintiff,

20 v.

21 ASUSTEK COMPUTER INC. and ASUS  
22 COMPUTER INTERNATIONAL,

23 Defendants.

24 CASE NO. 3:15-CV-04525-EMC

25  
**PLAINTIFF'S NOTICE OF UNOPPOSED  
MOTION AND UNOPPOSED MOTION  
FOR THE ISSUANCE OF A LETTER OF  
REQUEST FOR THE TAKING OF  
EVIDENCE ABROAD PURSUANT TO  
THE HAGUE CONVENTION**

26 Date: August 4, 2016  
27 Time: 1:30 p.m.  
28 Judge: Hon. Edward M. Chen

## **NOTICE OF MOTION**

TO ALL PARTIES HEREIN AND THEIR ATTORNEYS OF RECORD:

Please take notice that on August 4, 2016, at 1:30 p.m., or as soon thereafter as counsel may be heard before the Honorable Edward M. Chen, in the United States District Court for the Northern District of California, located at 450 Golden Gate Ave, San Francisco, California, Plaintiff Avago Technologies General IP (Singapore) Pte. Ltd., (“Avago”) will move and hereby does move this Court for the issuance of a Letter of Request for the Taking of Evidence Abroad pursuant to the Hague Convention from foreign third-party ARM Ltd. (“ARM”). This motion is based upon this Notice of Motion, the Statement of Relief, the accompanying Memorandum of Points and Authorities, the Declaration of Matthew C. Holohan (“Holohan Decl.”) submitted in support of this Motion, all matters with respect to which this Court may take judicial notice, all pleadings, papers and records on file in this action, and upon such other documentary and oral evidence as may be presented at the hearing. Counsel for Defendants ASUSTeK Computer Inc. and ASUS Computer International (collectively, “ASUS”) has indicated that ASUS does not oppose this Motion.

## **STATEMENT OF RELIEF**

Avago respectfully requests that the Court sign and affix its seal to the accompanying Letter of Request, and return the same with an original signature and seal to Avago's counsel for transmittal to the Central Authority for the United Kingdom for the Hague Evidence Convention.

## MEMORANDUM OF POINTS AND AUTHORITIES

## I. INTRODUCTION

Avago respectfully moves the Court, pursuant to the Hague Convention of 18 March 1970 on the Taking of Evidence Abroad in Civil or Commercial Matters (the “Hague Evidence Convention”), 23 U.S.T. 2555, 28 U.S.C. § 1781, and Federal Rules of Civil Procedure 26(b)(1) and 28(b), for issuance of a Letter of Request to obtain documents and testimony from foreign British third party ARM Ltd. (“ARM”). ARM possesses documents and knowledge to be used at trial in support of Avago’s allegations of infringement against ASUS. Accordingly, Avago respectfully requests that the Court grant this Motion and issue a Letter of Request on behalf of

PLAINTIFF'S UNOPPOSED MOTION FOR THE ISSUANCE OF LETTERS OF REQUEST  
FOR THE TAKING OF EVIDENCE ABROAD PURSUANT TO THE HAGUE CONVENTION  
CASE NO. 3:15-CV-04525-EMC

1 Avago for transmittal to the Central Authority for the United Kingdom for the Hague Evidence  
 2 Convention.

3 **II. FACTUAL BACKGROUND**

4 Avago asserts that ASUS infringes U.S. Patent Nos. 5,670,730, 5,870,087, 5,982,830,  
 5 6,188,835, 6,430,148, 6,744,387, and 6,982,663 (collectively, the “Patents-in-Suit”). (Dkt. No. 20)  
 6 The technology of the patents-in-suit relates to, among other things: decoding electronic video  
 7 and/or audio files (*e.g.*, MPEG); storing audio files (*e.g.*, MP3) on an integrated circuit chip;  
 8 reading data from an optical disc (*e.g.*, DVD or Blu-ray disc); and use of or compatibility with the  
 9 IEEE 802.11 wireless standard.

10 In support of its infringement claims, Avago diligently is pursuing discovery from ASUS.  
 11 In order to ensure its search is exhaustive, Avago now seeks discovery regarding particular  
 12 components of ASUS products that may not be available from ASUS or from public sources.  
 13 Specifically, ARM makes components used in ASUS products which relate to the technology of  
 14 the Patents-in-Suit as ARM provides products related to video processing, (*see* Declaration of  
 15 Matthew C. Holohan (“Holohan Decl.”), Ex. 1).

16 The Letter of Request that is the subject of this Motion is attached hereto as **Appendix A**  
 17 solicits assistance from the Central Authority for the United Kingdom for the Hague Evidence  
 18 Convention to obtain documents and testimony relevant to Avago’s claims of infringement from  
 19 ARM, which is headquartered in the United Kingdom. Holohan Decl., Ex. 2. Avago is unable to  
 20 secure the requested discovery from ARM through domestic discovery, such as a subpoena  
 21 pursuant to Fed. R. Civ. Proc. 45.<sup>1</sup>

22 Further, because the information Avago seeks via a Letter of Request relates to internal and  
 23 proprietary functionality of components purchased by ASUS, ASUS may not possess complete  
 24 information concerning the functionality of these devices. Thus, Avago may not be able to obtain  
 25 complete discovery from ASUS.

26  
 27 <sup>1</sup> Avago has served a subpoena on ARM’s U.S. entity, ARM Inc., but has yet to receive a  
 28 response. Holohan Decl. ¶ 4.

1       **III. ARGUMENT**

2       Both the United States and the United Kingdom are signatories to and bound by the Hague  
3 Evidence Convention, which authorizes the issuance of a Letter of Request from a judicial tribunal  
4 in the United States to the designated authority in the United Kingdom. *See Hague Evidence*  
5 *Convention, Ch. I, Art. 1, reproduced at 28 U.S.C. § 1781* (permitting “the transmittal of a letter  
6 rogatory or request directly from a tribunal in the United States to the foreign or international  
7 tribunal, officer, or agency to whom it is addressed and its return in the same manner”); *see also*  
8 *Societe Nationale Industrielle Aerospatiale v. U.S. Dist. Court for S. Dist. of Iowa*, 482 U.S. 522,  
9 533 (1987). Whether to issue a Letter of Request is a matter of discretion for the court. *See*  
10 *Aerospatiale*, 482 U.S. at 533-35.

11       The attached Letter of Request asks that a British court compel ARM to produce the  
12 documents and testimony described in the Letter. A form seeking a Request for Service Abroad of  
13 Judicial or Extrajudicial Documents directed to ARM is attached as Ex. 3 to the Holohan  
14 Declaration, which also requires the Court’s signature. As can be seen from the Letter, *see*  
15 **Appendix A**, Avago’s discovery requests are reasonably calculated to lead to the discovery of  
16 admissible evidence relating to components manufactured by ARM that are incorporated into  
17 infringing ASUS devices. As noted above, ARM has made components used in the allegedly  
18 infringing ASUS products.

19       **IV. CONCLUSION**

20       For the foregoing reasons, Avago respectfully requests that the Court grant this Motion,  
21 sign and affix its seal to the accompanying Letter of Request, and return the same with an original  
22 signature and seal to Avago’s counsel for transmittal to the Central Authority for the United  
23 Kingdom for the Hague Evidence Convention.

1 Dated: June 27, 2016

Respectfully Submitted,

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3 By: /s/ Matthew C. Holohan

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